

The Gazette of India

EXTRAORDINARY
PART II—Section 2
PUBLISHED BY AUTHORITY

No. 32] NEW DELHI, MONDAY, JULY 30, 1956

LOK SABHA

The following Bill was introduced in Lok Sabha on 30th July, 1956:—

BILL* No. 43 OF 1956

A Bill further to amend the State Financial Corporations Act, 1951.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the State Financial Corporations (Amendment) Act, 1956. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

63 of 1951. 2. In section 2 of the State Financial Corporations Act, 1951 (hereinafter referred to as the principal Act),— Amendment of section 2.

10 (i) for clause (b), the following clause shall be substituted, namely:—

“(b) ‘Financial Corporation’ means a Financial Corporation established under section 3 and includes a Joint Financial Corporation established under section 3A;”;

15 (ii) to clause (c), the following *Explanation* shall be added, namely:—

“*Explanation.*—The expression ‘processing of goods’ includes any sort or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation;”.

*The President has, in pursuance of clauses (1) and (3) of article 147 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

(iii) after clause (f), the following clause shall be inserted, namely:—

“(ff) ‘State Government’ in relation to a Part C State, means the Lieutenant Governor, or as the case may be, the Chief Commissioner;”.

5

Amendment
of section 3.

3. In sub-section (2) of section 3 of the principal Act, for the words “acquire and to hold”, the words “acquire, hold and dispose of” shall be substituted.

Insertion of
new Section
3A.

4. After section 3 of the principal Act, the following section shall be inserted, namely:—

10

Establish-
ment of
Joint Finan-
cial Corpora-
tion.

“3A. (1) Notwithstanding anything contained in section 3, two or more States may, after consultation with the Reserve Bank, enter into an agreement that there shall be one Financial Corporation for the group of States participating in the agree-
ment and if the agreement is published in the Official Gazette 15
of each of those States, the Central Government may, by notification in the Official Gazette, establish a Joint Financial Corpora-
tion to serve the needs of those States under such name as may
be specified in the notification.

(2) An inter-State agreement under sub-section (1) among 20
the participating States may—

(a) provide for the fixation of the authorised capital of the Joint Financial Corporation, the number of fully paid up shares into which it shall be divided, and the allocation among the participating States of the shares to be distri- 25
buted under clause (a) of sub-section (3) of section 4;

(b) provide for the sharing of the liability for the guarantee under section 6 or section 7;

(c) provide for the number of directors to be nominated to the Board by each participating State Government; 30

(d) provide for the apportionment among the participat-
ing States of expenditure in connection with the Joint
Financial Corporation;

(e) provide for the division among the participating States of the surplus profits payable by the Joint Financial 35
Corporation under sub-section (3) of section 35;

(f) determine which of the participating State Govern-
ments shall exercise the several functions of the State Gov-
ernment under this Act, and references in this Act to the
State Government, in relation to the Joint Financial Cor- 40
poration, shall, save as otherwise expressly provided, be
construed accordingly;

(g) provide for consultation among the participating States either generally or with reference to particular matters arising under this Act;

5 (h) make such incidental and consequential provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) The Joint Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to
10 the provisions of this Act, to acquire, hold and dispose of property and shall by the said name sue and be sued.

(4) Any reference in this Act to 'State' in relation to a Joint Financial Corporation established for two or more States, shall be construed as a reference to each such State."

15 5. In sub-section (1) of section 5 of the principal Act, after the words "financial institution", the words "or class of financial institutions" shall be inserted. Amendment of section 5.

6. In section 7 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 7.

20 "(3) The Financial Corporation may, for the purpose of carrying out its functions under this Act, borrow money from the Reserve Bank, repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date on which the money is so borrowed, against securities of the Central
25 Government or of any State Government."

7. In section 10 of the principal Act,—

(i) to clause (a), the following proviso shall be added, namely:— Amendment of section 10.

30 "Provided that in the case of a Joint Financial Corporation, the number of directors shall be such as the State Governments of the participating States may, by agreement among themselves, think fit to nominate, each participating State Government nominating not more than two directors.";

35 (ii) in clause (d), the words "from among themselves" shall be omitted.

8. In section 14 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:— Amendment of section 14.

40 "(1A) If the managing director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the State Government may, after consultation with the Board, appoint another person to act in his place during his absence."

Amendment
of section
17.

9. Section 17 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The State Government may, after consulting the Board, remove the managing director from office: 5

Provided that no managing director shall be so removed unless he has been given an opportunity of showing cause against his removal.”.

Amendment
of section
18.

10. In section 18, in sub-section (1),—

(a) for the word “three”, the words “the following” shall be 10 substituted.

(b) to clause (a), the following proviso shall be added, namely:—

“Provided that in the case of a Joint Financial Corporation, in addition to the one director elected from among the 15 directors nominated by the Reserve Bank and the Industrial Finance Corporation of India, as many directors as there are participating States shall be elected by the nominated directors, one each from among the directors nominated by each of the participating State Governments.” 20

Amendment
of section 19

11. In section 19 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) If, for any reason, a director nominated under clause (a) or clause (b) or clause (c) of section 10 is unable to attend any meeting of the Board, the State Government, the Central 25 Board of the Reserve Bank or the Board of Directors of the Industrial Finance Corporation of India, as the case may be, may depute any other person to attend the said meeting and such person shall, for all purposes of the said meeting, be deemed to be a director nominated under clause (a) or clause (b) or clause 30 (c), as the case may be, of the said section.

Amendment
of section
25.

12. In section 25 of the principal Act,—

(a) in sub-section (1),—

(i) the word “and” at the end of clause (e) shall be omitted; 35

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) acting as an agent for the Central Government or the State Government or the Industrial Finance Corporation of India established under the Industrial 40 Finance Corporation Act, 1948, in the transaction of any business with an industrial concern in respect of loans

or advances granted, or debentures subscribed, by any one of them; and”;

(b) in sub-section (2), after the words “prescribed by regulations”, the words “or unless it is guaranteed as to the repayment of principal and the payment of interest by the State Government, a scheduled bank or a State co-operative bank” shall be inserted.

13. In section 27 of the principal Act, in sub-section (2), for the words, figures and brackets “Indian Companies Act, 1913 (VII of 1913)”, the words and figures “Companies Act, 1956” shall be substituted. Amendment of section 27.

14. In section 29 of the principal Act,—

Amendment of section 29.

(a) in sub-section (1), for the words “right to sell”, the words “right to transfer by way of lease or sale” shall be substituted;

(b) in sub-section (2)—

(i) the words “of sale and realisation” shall be omitted.

(ii) for the words “as if the sale”, the words “as if the transfer” shall be substituted.

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Where the management of an industrial concern is taken over by the Financial Corporation or any property is transferred and realised by it under the provisions of sub-section (1), all costs, charges and expenses properly incurred by it as incidental to such management, or transfer and realisation shall be recoverable from the industrial concern and the money which is received by it from such management or transfer and realisation shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.”.

15. In section 31 of the principal Act, in sub-section (1),—

Amendment of section 31.

(i) after the words “fails to make such repayment”, the words and figures “then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882” shall be inserted.

(ii) in clause (a), for the word “Corporation”, the words “Financial Corporation” shall be substituted.

Amendment
of section
32.

16. In section 32 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

“(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908, for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree holder.”

5 of 1908.

Insertion of
new sections
32A, 32B,
32C, 32D,
32E and
32F.

17. After section 32 of the principal Act, the following new sections shall be inserted, namely:—

Power of
Financial
Corporation
to appoint
directors or
administra-
tors of an
industrial
concern
when
management
is taken
over.

“32A. (1) When the management of an industrial concern is taken over by the Financial Corporation, the Financial Corporation may, by order notified in the Official Gazette, appoint as many persons as it thinks fit,—

15

(a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956, to be directors of that industrial concern; or

1 of 1956.

(b) in any other case, to be administrators of that industrial concern.

20

(2) The power to appoint directors or administrators under this section includes the power to appoint any individual, firm or company to be the managing agent or manager of the industrial concern on such terms and conditions as the Financial Corporation may think fit.

25

Effect of
notified
order under
section 32A.

32B. On the issue of a notified order under section 32A,—

(a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956, all persons holding office as directors of the industrial concern and in any other case, all persons holding any office having the powers of superintendence, direction and control of the industrial concern, immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

1 of 1956.

(b) any contract of management between the industrial concern and any managing agent or any director or manager thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;

(c) in the case of an industrial concern which is a company as defined in the Companies Act, 1956, the managing

1 of 1956.

agent, if any, appointed under section 32A shall be deemed to have been duly appointed in pursuance of the said Act and the memorandum and articles of association of the industrial concern and the provisions of the said Act and, the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Financial Corporation;

(d) the directors or the administrators appointed under section 32A shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the industrial concern is, or appears to be, entitled, and all the property and effects of the industrial concern shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the notified order;

(e) the directors appointed under section 32A shall, for all purposes, be the directors of the industrial concern duly constituted under the Companies Act, 1956, and such directors, or as the case may be, the administrators appointed under section 32A, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the industrial concern, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial concern or from any other source whatsoever.

32C. (1) Subject to the control of the Financial Corporation, the directors, or as the case may be, the administrators appointed under section 32A, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial concern and shall exercise such powers and have such duties as may be prescribed.

(2) Without prejudice to the generality of the powers vested in them under sub-section (1), the directors or as the case may be, the administrators appointed under section 32A, may, with the previous approval of the Financial Corporation, make an application to a Court for the purpose of cancelling or varying any contract or agreement entered into at any time before the issue of the notified order under section 32A, between the industrial concern and any other person and the Court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial concern, make an order cancelling or varying

Powers and duties of directors and administrators.

(either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement and the contract or agreement shall have effect accordingly.

No right to compensation for termination of contract of managing agent, managing director, etc.

32D. (1) Notwithstanding anything to the contrary contained in any contract or in any law for the time being in force, 5 no managing agent, managing director or any other director or a manager or any person incharge of management of an industrial concern shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered 10 into by him with such concern.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing agent or managing director, or any other director or manager or any such person incharge of management to recover from the in- 15 dustrial concern, moneys recoverable otherwise than by way of such compensation.

Application of Act I of 1956.

32E. (1) Where the management of an industrial concern, being a company as defined in the Companies Act, 1956, is taken 1 of 1956. over by the Financial Corporation, then, notwithstanding any- 20 thing contained in the said Act or in the memorandum or articles of association of such concern,—

(a) it shall not be lawful for the shareholders of such concern or any other person to nominate or appoint any person to be a director of the concern; 25

(b) no resolution passed at any meeting of the shareholders of such concern shall be given effect to unless approved by the Financial Corporation;

(c) no proceeding for the winding up of such concern or for the appointment of receiver in respect thereof 30 shall lie in any court, except with the consent of the Financial Corporation.

(2) Subject to the provisions contained in sub-section (1) and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the 35 Central Government in consultation with the State Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to such concern 1 of 1956. in the same manner as it applied thereto before the issue of the notified order under section 32A. 40

1 of 1956.

32F. (1) Where the management of an industrial concern not being a company as defined in the Companies Act, 1956, is taken over by the Financial Corporation, no suit or proceedings for dissolution or for partition shall, in so far as it relates to that industrial concern, lie in any court or before any tribunal or other authority except with the consent of the Financial Corporation.

Restriction on filing of suits for dissolution, etc., of an industrial concern not being a company when its management is taken over.

(2) No proceeding for the appointment of any official assignee or receiver in relation to any industrial concern the management of which has been taken over by the Financial Corporation shall lie in any court except with consent of the Financial Corporation."

18. In section 33 of the principal Act, in sub-section (2), for the words "or in a scheduled bank in consultation with the Reserve Bank", the words "or, in consultation with the Reserve Bank in a scheduled bank or a State co-operative bank", shall be substituted.

Amendment of section 33.

19. In sub-section (1) of section 36 of the principal Act, for the words "two months", the words "three months" shall be substituted.

Amendment of section 36.

20. In section 37 of the principal Act,—

Amendment of section 37.

(a) in sub-section (1),—

(i) for the words, figures and brackets "section 144 of the Indian Companies Act, 1913 (VII of 1913)", the words and figures "section 226 of the Companies Act, 1956" shall be substituted;

1 of 1956.

(ii) for the words "the other", the words "the other auditor or auditors" shall be substituted;

(b) after sub-section (1), the following proviso shall be inserted, namely:—

"Provided that where such other auditor or auditors are to be elected for the first time after the establishment of the Financial Corporation, the Board may appoint such auditor or auditors who shall hold office until the election is held".

Insertion of
new section
37A.

21. After section 37 of the principal Act, the following section shall be inserted, namely:—

Inspection.

“37A. (1) The Central Government may direct the Reserve Bank to inspect the working of any Financial Corporation, and if so directed, the Reserve Bank shall cause an inspection to be made by one or more of its officers, of the Financial Corporation and its books and accounts; and the Reserve Bank shall send the report of such inspection to the Central Government and to the State Government and shall supply a copy thereof to the Financial Corporation.

10

(2) It shall be the duty of every director or every officer of the Financial Corporation to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the Financial Corporation as the said officer may require of him within such time as the said officer may specify.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, or in any other law for the time being in force, no court, tribunal or other authority shall have power to require the Reserve Bank or any of its officers to produce before such court, tribunal or other authority the report of the inspection made by it under sub-section (1) or any copy thereof.

1 of 1872.

(4) The State Government may, after considering any report sent to it under sub-section (1), give such instructions to the Board as it considers necessary and it shall be the duty of the Board to comply with such instructions.”

Amendment
of section
38.

22. In sub-section (3) of section 38 of the principal Act, for the words “three months”, the words “four months” shall be substituted.

Amendment
of section
39.

23. In section 39 of the principal Act,—

30

(a) in sub-section (1), after the words “the State Government”, the words “in consultation with the Reserve Bank” shall be inserted;

(b) in sub-section (3), after the words “laid down by the State Government”, the words, brackets, figures and letter “under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37A” shall be inserted.

24. After section 46 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 46A and 46B.

5 “46A. (1) Where a Financial Corporation has been established for any State and any other State desires that the Financial Corporation should serve its needs, and the States, after consultation with the Reserve Bank, enter into an agreement which is published in the Official Gazettes of each of those States, then the Financial Corporation shall, on the issue of a notification in the Official Gazette by the Central Government, serve the
10 needs of those States in terms of the agreement.

Extension of jurisdiction of the Financial Corporation to other States by agreement.

(2) An inter-State agreement among the participating States may, as far as may be, make all such provisions as are referred to in sub-section (2) of section 3A.

15 46B. The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid,
20 the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.”.

Effect of Act on other laws.

25 25. In sub-section (2) of section 48 in clause (m), after the words “this Act”, the words “fees for attending meetings thereof and the conduct of business thereat” shall be inserted.

Amendment of section 48.

STATEMENT OF OBJECTS AND REASONS

The working of the State Financial Corporations Act, 1951, during the last few years brought to light certain difficulties. These were considered on official levels by the representatives of the State Financial Corporations and of the Reserve Bank of India in August, 1954 and November, 1955, and certain amendments to the Act were suggested as a result of these discussions.

2. Some of the States including Part C States are experiencing some difficulty in establishing separate financial corporations for their States. In order to remove such difficulty, it is proposed to make a provision which would enable a group of two or more States to establish, by agreement among themselves, a Joint Financial Corporation for those States. It also seems desirable to provide for the extension of the jurisdiction of an existing financial corporation of a State to another State by agreement. As it is often difficult for the Central Government, a State Government or the Industrial Finance Corporation of India to transact business directly with an industrial concern in respect of loans or advances to be granted to it, it is proposed to empower the State Financial Corporations to undertake agency functions on their behalf. It is also proposed to amend section 25 of the Act so that industrial concerns engaged in small scale and cottage industries, not having sufficient tangible assets, may avail themselves of the financial accommodation from State Financial Corporations.

3. When the management of an industrial concern is taken over by a State Financial Corporation under section 29 or section 32 of the Act, it is necessary to vest the Corporation with certain powers for the efficient management of the concern. It is proposed to insert in the Act new sections 32A to 32F for the purpose and these provisions follow closely those of the Industrial Finance Corporation Act, 1948. It seems desirable to provide for a machinery for the inspection of the working of State Financial Corporations. Accordingly, it is proposed to empower the Reserve Bank to make such inspection at the instance of the Central Government.

4. The Bill seeks to achieve these objects. Opportunity has also been taken to introduce in the Act some other amendments of a consequential or procedural nature keeping in view the amendments made from time to time in the Industrial Finance Corporation Act, 1948.

A. C. GUHA.

NEW DELHI;
The 10th July, 1956.

FINANCIAL MEMORANDUM

The Bill envisages formation of Joint Financial Corporations by two or more States as some of the smaller States, particularly Part C States, are not in a position to establish independent Financial Corporations of their own. It is not possible at this stage to estimate the expenditure to be incurred out of the Consolidated Fund of India in connection with the formation of Joint Financial Corporations by Part C States as the number of such States which would avail of the permissive provisions of the Bill are not known. Further, the share capital of such Joint Financial Corporations would be fixed only at the time of their establishment after taking into account of the needs of the States forming them. The contribution which the Central Government would be required to make towards the share capital of Part C States, which is in the nature of a contingent liability, cannot be estimated at this stage. Further, clause 4 of the Bill pertaining to the inter-State agreement provides for the sharing of the liability for the guarantee to be given under section 6 or 7. The financial liability in respect of the guarantee under section 6 or 7 is also a contingent liability and it is not possible to estimate the expenditure involved from the Consolidated Fund of India.

M. N. KAUL,
Secretary.